

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re: . Docket No. BK-N 05-54727-GWZ
SCOTT K. GREENE, . Reno, Nevada
Debtor. . May 24, 2006
9:33:20 a.m.
• • • • •

HEARING
OBJECTION BY CREDITOR
RENO WELLS TO DEBTOR
SCOTT GREENE'S CLAIM
OF HOMESTEAD EXEMPTION
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY JUDGE

Electronic Court Recorder: Sylvia Tilton

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Sparks, Nevada 89432-5804

Proceedings recorded by digital sound recording, transcript produced by transcription service.

APPEARANCES:

For the Debtor: JOHN A. WHITE, JR., ESQ.
335 West First Street
Reno, Nevada 89503

For Reno Wells: GEOFFREY L. GILES, ESQ.
527 California Avenue
Reno, Nevada 89504

Also Present: RENO WELLS
SCOTT K. GREENE

1 COURTROOM DEPUTY: All rise.

2 THE COURT: Please be seated.

3 In the matter of Scott Greene.

4 MR. WHITE: Good morning, your Honor. John White
5 for the debtor.

6 MR. GILES: Good morning, Geoff Giles for Reno
7 Wells, your Honor, who is present in court.

8 THE COURT: Thank you.

9 MR. WHITE: Mr. Greene is present as well.

10 THE COURT: Well, this is not the time for an
11 evidentiary hearing. We've set it for ten minutes.

12 So let's see if we can do this in ten minutes. I
13 doubt it.

14 I have read the objection to the claim of
15 exemption filed on April 12;

16 And included in there were pleadings that had
17 previously been filed in another case;

18 The prior case filed by the debtor bore Number 04-
19 52579. It was a Chapter 13;

20 And a hearing had been set regarding an objection
21 to claim of exemption filed in that case;

22 That hearing date was January 27, 2005, at 2:00
23 p.m. and set for thirty minutes, a far more realistic time.

24 And one of the exhibits attached to the objection
25 in this case--which is a Chapter 7 that was filed on

1 October 15, 2005, so shortly after the dismissal of the
2 Chapter 13--is a supplemental brief in support of objection
3 to claim of exemption in the prior case;

4 The trustee's supplemental points and authorities
5 regarding objection;

6 So I have read them and I will take judicial
7 notice of the claimed exemption, including the schedules
8 and the statement filed by the debtor in the prior case.
9 Because I think they go to credibility if nothing else.

10 And I've seen pictures of the site;

11 This matter has been properly noticed;

12 Filed on May 1st was the debtor's reply in support
13 of homestead exemption, which was the opposition to the
14 objection. I've read it;

15 I've read the declaration of Lee Lawrence that was
16 filed on May 1st in support of the debtor's exemption;

17 The declaration of Brian Quaard (pho) that was
18 filed in support of the homestead exemption on May 1st;

19 The declaration of the debtor's brother, Eric
20 Bransness (pho) filed on May 1st;

21 The declaration of the debtor and the exhibits
22 attached thereto also filed -- oh, this one was actually
23 filed on May 2nd;

24 I would point out that both our local rules, the
25 Federal Rules of Civil Procedure and numerous case law

1 require exhibits to be based upon personal knowledge;

2 They're not intended to be argument. They're not
3 intended to provide legal conclusions;

4 I have some question when one tries to put in an
5 affidavit what somebody else concluded;

6 Paragraph 13 of the May 2nd Greene declaration
7 states at Page 4, on line 1:

8 "However, I believe Mr. Stone reasonably concluded
9 from my statement I was no longer living on the
10 property."

11 I guess that could come in as a belief that the
12 debtor had;

13 And clearly it shows, in my opinion, that what he
14 told the County, while it may have been technically
15 accurate, it created an impression that was not accurate;

16 And that the County doubtlessly believed he was no
17 longer living in that property even though he was;

18 Which is why he called later;

19 I read errata to Schedule C that was filed on
20 April 26, 2005, in this case, where the claimed exemption
21 is now to be based upon NRS 21.090.1(l) and not 1(m).

22 Which makes sense because 1(m) is clearly not applicable.

23 Because the debtor owns the property;

24 I read the reply filed on May 17th by Mr. Giles on
25 behalf of his client;

1 And attached thereto were exhibits that I've also
2 read, including a supplement to Schedule C that had been
3 earlier filed in this case by the debtor, adding the 1976
4 travel trailer as property claimed as exempt;

5 That's that travel trailer that's on the property
6 at 450 Alamosa Drive;

7 I have read the declaration of Erica Jones from
8 the Washoe County District Attorney's Office that was filed
9 on May 17th;

10 And finally I have read the supplemental
11 declaration of the debtor that was filed yesterday but I
12 just received this morning;

13 And I notice once again it contains legal
14 conclusions;

15 At lines 27 and 28 of Page 1, then he's got
16 information and belief. That's not the basis for an
17 affidavit and frankly not really relevant.

18 MR. GILES: Excuse me, your Honor.

19 I'm not aware of the document that you are
20 referring to.

21 THE COURT: Well, you --

22 MR. GILES: I haven't seen that honestly.

23 THE COURT: It was probably served on you
24 electronically.

25 Is that correct?

1 MR. WHITE: It was served on him electronically,
2 your Honor. I also called Mr. Giles' office at five last
3 night and told him I had served it.

4 We made every effort we could to fax it to him
5 last night and this morning, and his fax was down.

6 THE COURT: Okay.

7 MR. GILES: Your Honor, I wasn't told anything
8 last night. I wasn't in the office at five o'clock.

9 THE COURT: It doesn't matter.

10 MR. GILES: I'm sorry.

11 THE COURT: It doesn't matter. He's got a
12 building permit now.

13 Footnote 7 in the original affidavit, by the way,
14 is clearly not within the debtor's personal knowledge. And
15 I'm striking it.

16 I went back and looked at preparation that I had
17 taken for the January 27th hearing, which, as far as I can
18 tell, was not conducted because that case was dismissed
19 immediately prior to that hearing;

20 Isn't that correct?

21 MR. GILES: That's correct, your Honor.

22 THE COURT: Does either party have any additional
23 evidence they wish to offer either in support of the
24 objection or in response to the objection?

25 Mr. Giles?

1 MR. GILES: Well, not having seen this latest
2 document, did you just say you struck that document?

3 THE COURT: No. I struck footnote 7 of the
4 original Greene declaration.

5 MR. GILES: I see.

6 The only proffer I would make is that the house he
7 used to live in was 780 Browning.

8 And --

9 THE COURT: Where he lived with Karen --

10 MR. GILES: With Karen Smith.

11 THE COURT: Yeah.

12 MR. GILES: Right.

13 And that I would --

14 THE COURT: So what?

15 MR. GILES: -- I would call Karen Smith to the
16 stand and she would testify that mail is now coming to that
17 address addressed to Dr. Greene.

18 That's the only thing I would --

19 MR. WHITE: I won't object to that. If he wants
20 to call her then he should call her.

21 THE COURT: Well listen, all that matters,
22 homesteads and exemptions are determined upon the date of
23 the filing of the petition. I don't think there's any
24 question about that.

25 MR. WHITE: I think you're right.

1 MR. GILES: Your Honor, I'd like to address that
2 in argument when I get a chance.

3 THE COURT: Okay.

4 MR. WHITE: Your Honor, in response to your
5 question you didn't get to me on do we have --

6 THE COURT: Yes.

7 MR. WHITE: -- have anything else.

8 With regard to the stricken footnote, I'd simply
9 note that attached as Exhibit A to -- or Exhibit C, I
10 should say, to Mr. Giles' reply filed May 17 is the log of
11 the county enforcement -- code enforcement people.

12 And the very second sentence in that log says:
13 "The complainant is a creditor for the property
14 owner."

15 THE COURT: It does say that. I didn't strike
16 that.

17 MR. WHITE: Okay.

18 THE COURT: What I struck was something that the
19 declarant didn't have personal knowledge of.

20 MR. WHITE: Okay. Right.

21 THE COURT: I didn't say what was there was right
22 or wrong, I just said that it wasn't proper in an
23 affidavit.

24 All right. Do I need to set aside time to have an
25 evidentiary hearing in this matter? That's my question.

1 It's set for ten minutes. I've already taken ten
2 minutes. I've got a full calendar today.

3 MR. WHITE: Your Honor, I think you should. I
4 think the crucial question is--you've just phrased it--was
5 he living there on the date --

6 THE COURT: With the intent --

7 MR. WHITE: -- the petition was filed?

8 THE COURT: Remember intent is critical for the
9 homestead.

10 MR. WHITE: Right.

11 THE COURT: When you take a look at what I wrote
12 in Sullivan and you take a look at what the judge wrote in
13 an earlier case--I think Zohner (pho) is the name of the
14 case-- that intent becomes critical.

15 I'm going to give you my tentative conclusions and
16 then I am going to set this for an evidentiary hearing.

17 One, I am far from convinced that the 1215-day
18 limitation as imposed or enacted, I should say, by the
19 Reform Act on its effective of April 20, 2005 has any
20 relevance to this proceeding;

21 The statute says acquired. Acquired doesn't mean,
22 so far as I can determine, the same as living in, declaring
23 homestead;

24 If that's what Congress intended that's what
25 Congress could have written;

1 And there's absolutely no authority cited for the
2 position that the fact that you may have owned it for
3 longer than 1215 days and not declared a homestead means
4 that you're ineligible to declare a homestead on the date
5 that you filed the petition;

6 So unless I see some authority for that
7 proposition and some type of analysis of legislative
8 history and application to the statute, I certainly can't
9 get there;

10 Secondly, I do believe that homestead and
11 exemptions are determined upon the date that the petition
12 is filed;

13 But I think that also, as I noted, that the intent
14 of the parties, at least the intent of the debtor is
15 critical;

16 Now there is some of the authorities in here that
17 I just did not understand. And perhaps I was confused.

18 We know that the debtor purchased this property in
19 2003?

20 MR. WHITE: '94, your Honor, he bought.

21 THE COURT: In '94?

22 That the declaration of homestead was recorded on
23 August 11, 2004;

24 The Chapter 13 was filed on August 27, 2004;

25 That there had been an agreement to build a home

1 on the property but no permit was obtained until just
2 recently;

3 That the debtor had a travel trailer, not a mobile
4 home;

5 And he told the County that he would move;

6 But that may well have been post-petition, and I'm
7 not sure that it makes any difference;

8 Now you need a dwelling or a mobile home;

9 It appears to me that you have conceded that that
10 travel trailer is exactly that, a travel trailer, not a
11 mobile home;

12 MR. WHITE: Yes, your Honor. We would --

13 THE COURT: Okay.

14 MR. WHITE: We would go further and say that even
15 if it's a tent of cloth--because he lived it as a tent--as
16 long as --

17 THE COURT: There's a tent next to the travel
18 trailer.

19 MR. WHITE: Well --

20 THE COURT: Because he just used the travel
21 trailer and the refrigerator or something in there.

22 MR. WHITE: Right.

23 We think --

24 THE COURT: And storage.

25 MR. WHITE: -- it doesn't matter what the

1 structure is, what it's made of, whether cloth, steel,
2 wood. It's whether he lives there with the intent of
3 claiming it.

4 THE COURT: But let's make sure we understand
5 exactly what your admission is.

6 That the travel trailer is not a mobile home;

7 And it is your position that there's a dwelling on
8 the property.

9 MR. WHITE: Yes, your Honor. That --

10 THE COURT: Because it's the word dwelling that's
11 used under 115.005, I believe.

12 MR. WHITE: Right.

13 And that's what we claimed just to make sure that
14 everyone knew we were claiming the home, the trailer as the
15 home.

16 We amended our petition and put in 115. We did
17 not claim under the section that says a mobile home is
18 exempt even if the land is not owned. That was added
19 later.

20 Our case would follow or arise on the law prior to
21 that amendment allowing mobile homes to be exempted.

22 THE COURT: You're basing it simply on dwelling.

23 MR. WHITE: Yes, your Honor.

24 THE COURT: All right.

25 So that simplifies the procedure somewhat.

1 Because the statute is fairly clear.

2 All right.

3 I also believe that Jackman vs. Nance indicates
4 that it isn't just the particular portion of the property
5 on which the dwelling is located, but all of the property
6 that's used in association with that;

7 So perhaps the entire sixty-seven acres. And
8 that's what Jackman found.

9 MR. GILES: May I point something out, your Honor?

10 THE COURT: Yes.

11 MR. GILES: Jackman is the latest pronouncement
12 from the Nevada Supreme Court on this issue. And the
13 language in the holding of Jackman I think is critical.
14 Because it says:

15 "Using a building partly for business purposes is
16 not inconsistent with the claim of homestead
17 protection, provided it is, and continues to be,
18 the bona fide residence of the family."

19 THE COURT: That's right. On the date of the
20 filing of the petition.

21 Read Matley, read what the Supreme Court said.

22 And if you disagree with it, then brief it.

23 Take a look at what I wrote in Sullivan. Because
24 that was exactly the issue I had in the Sullivan case.
25 I've done the research.

1 And if you think it's incorrect then I need to
2 know the basis for that.

3 We now know we're proceeding upon NRS 115.005.

4 Which -- 2(a):

5 "Homestead means the property consisting of a
6 quantity of land together with a dwelling house
7 thereon and its appurtenances."

8 Correct?

9 MR. WHITE: Yes, your Honor.

10 THE COURT: All right.

11 It is not based upon (b) which is a mobile home,
12 whether or not the underlying land is owned by the
13 claimant.

14 All right. Then there's a argu -- so we don't
15 have to worry about definition of mobile home. We don't
16 have to worry about any of that. What we're looking at is
17 dwelling.

18 Correct?

19 MR. WHITE: Correct, your Honor.

20 THE COURT: Because I think you're right. I think
21 you're moot.

22 I'm well aware of the holding in Jackman.

23 Regarding legislative interpretation, I think
24 there is an excellent exposition on that subject in Judge
25 Markell's opinion regarding 522(b). I think it's Bariel

1 (pho) .

2 But that case, he did that about six months ago.

3 And you can put your hands on that case.

4 (Pause in proceedings)

5 THE COURT: So I need to have evidence regarding
6 debtor's intent, the situation on the date of the filing,
7 and I think additional briefing on the points that I've
8 just raised and now that we've at least narrowed the
9 issues.

10 And if you can -- and if you want to brief on BAP
11 CPA feel free.

12 I do not believe that the 125,000-dollar cap
13 imposed by that is applicable. But I'll give you a chance
14 to, if you can find some authority, to cite it to me.

15 How much time will you need for the evidentiary
16 hearing and argue the matter? two hours? one hour?

17 MR. GILES: Your Honor, I think probably two hours
18 might make sense.

19 I'm going to want to take Mr. Greene's -- Dr.
20 Greene's deposition between now and then. And --

21 THE COURT: Okay.

22 MR. GILES: -- I think we should probably schedule
23 an hour.

24 THE COURT: I think that's realistic, Mr.
25 White, --

1 MR. GILES: A couple of months.

2 THE COURT: -- don't you?

3 MR. WHITE: I think so, your Honor.

4 THE COURT: All right.

5 (Discussion off the record between the Court and the
6 courtroom deputy)

7 THE COURT: Two o'clock, Monday, July 31st. And
8 you have a whole afternoon.

9 I want simultaneous briefing;

10 And any additional briefs have to be filed by
11 Friday, July 21st, so I have a chance to look at them;

12 Any further declarations have to be filed by that
13 date and time;

14 I don't think I'll need any replies. By that, I
15 mean I have four sets of briefs right now;

16 I'd like you to limit those briefs to ten pages
17 since I have the others;

18 We've narrowed the issues, identified the issues
19 that I'm concerned about;

20 If you think my focus is incorrect tell me why;

21 And then I look forward to seeing you folks on the
22 31st.

23 MR. GILES: Your Honor, just one clarification.

24 You referred to Matley. You're talking about the
25 Nevada Supreme Court case of Matley?

3 MR. GILES: A U.S. case?

6 MR. GILES: And Sullivan is an opinion you wrote
7 in this court. Thank you.

8 MR. WHITE: Which I've cited, your Honor.

11 MR. WHITE: Thank you, your Honor.

12 THE COURT: All right. Thank you.

13 That had to deal with abandonment of a homestead.

14 MR. GILES: Thank you, your Honor.

15 THE COURT: Thank you.

16 (Proceedings concluded at 9:54:35)

17

18

19 CERTIFICATE

20

21 I certify that the foregoing is a correct
22 transcript from the digital sound recording of the
23 proceedings in the above-entitled matter.

24

25 s/ Marjorie G. Davall

June 1, 2006